

Introduced by Senator Escutia

February 22, 2005

An act to amend Sections 1785.3 and 1786.2 of the Civil Code, relating to credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 986, as introduced, Escutia. Consumer credit reports: employment purposes.

Existing law defines and regulates consumer credit reporting agencies and investigative consumer reporting agencies. Existing law permits consumer credit reporting agencies and investigative consumer reporting agencies to provide their reports only under specified circumstances, one of which is to a person that an agency has a reason to believe intends to use the information for employment purposes. Existing law defines "employment purposes" as when a report is used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

This bill would revise the definition of "employment purposes" to require that, when the consumer credit report or the investigative consumer report is used for employment purposes, as described above, the information be directly related to the skills necessary to perform the job.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.3 of the Civil Code is amended to
2 read:

1 1785.3. The following terms as used in this title have the
2 meaning expressed in this section:

3 (a) “Adverse action” means a denial or revocation of credit, a
4 change in the terms of an existing credit arrangement which is
5 adverse to the interests of the consumer, or a refusal to grant
6 credit in substantially the amount or on substantially the terms
7 requested. “Adverse action” includes all of the following:

8 (1) Any denial of, increase in any charge for, or reduction in
9 the amount of, insurance for personal, family, or household
10 purposes made in connection with the underwriting of insurance.

11 (2) Any denial of employment or any other decision made for
12 employment purposes which adversely affects any current or
13 prospective employee.

14 (3) Any action taken, or determination made, with respect to a
15 consumer (A) for an application for an extension of credit, or an
16 application for the hiring of a dwelling unit, and (B) that is
17 adverse to the interests of the consumer.

18 “Adverse action” does not include (A) a refusal to extend
19 additional credit to a consumer under an existing credit
20 arrangement if (i) the applicant is delinquent or otherwise in
21 default under that credit arrangement or (ii) the additional credit
22 would exceed a credit limit previously established for the
23 consumer or (B) a refusal or failure to authorize an account
24 transaction at a point of sale.

25 (b) “Consumer” means a natural individual.

26 (c) “Consumer credit report” means any written, oral, or other
27 communication of any information by a consumer credit
28 reporting agency bearing on a consumer’s credit worthiness,
29 credit standing, or credit capacity, which is used or is expected to
30 be used, or collected in whole or in part, for the purpose of
31 serving as a factor in establishing the consumer’s eligibility for:
32 (1) credit to be used primarily for personal, family, or household
33 purposes, or (2) employment purposes, or (3) hiring of a dwelling
34 unit, as defined in subdivision (c) of Section 1940, or (4) other
35 purposes authorized in Section 1785.11.

36 The term does not include (1) any report containing
37 information solely as to transactions or experiences between the
38 consumer and the person making the report, (2) any
39 communication of that information or information from a credit
40 application by a consumer that is internal within the organization

1 that is the person making the report or that is made to an entity
2 owned by, or affiliated by corporate control with, that person;
3 provided that the consumer is informed by means of a clear and
4 conspicuous written disclosure that information contained in the
5 credit application may be provided to these persons; however,
6 where a credit application is taken by telephone, disclosure shall
7 initially be given orally at the time the application is taken, and a
8 clear and conspicuous written disclosure shall be made to the
9 consumer in the first written communication to that consumer
10 after the application is taken, (3) any authorization or approval of
11 a specific extension of credit directly or indirectly by the issuer
12 of a credit card or similar device, (4) any report by a person
13 conveying a decision whether to make a specific extension of
14 credit directly or indirectly to a consumer in response to a request
15 by a third party, if the third party advises the consumer of the
16 name and address of the person to whom the request was made
17 and the person makes the disclosures to the consumer required
18 under Section 1785.20, (5) any report containing information
19 solely on a consumer's character, general reputation, personal
20 characteristics, or mode of living which is obtained through
21 personal interviews with neighbors, friends, or associates of the
22 consumer reported on, or others with whom he is acquainted or
23 who may have knowledge concerning those items of information,
24 (6) any communication about a consumer in connection with a
25 credit transaction which is not initiated by the consumer, between
26 persons who are affiliated (as defined in Section 150 of the
27 Corporations Code) by common ownership or common corporate
28 control (as defined by Section 160 of the Corporations Code), if
29 either of those persons has complied with paragraph (2) of
30 subdivision (b) of Section 1785.20.1 with respect to a
31 prequalifying report from which the information communicated
32 is taken and provided the consumer has consented to the
33 provision and use of the prequalifying report in writing, or (7)
34 any consumer credit report furnished for use in connection with a
35 transaction which consists of an extension of credit to be used
36 solely for a commercial purpose.

37 (d) "Consumer credit reporting agency" means any person
38 who, for monetary fees, dues, or on a cooperative nonprofit basis,
39 regularly engages in whole or in part in the business of
40 assembling or evaluating consumer credit information or other

1 information on consumers for the purpose of furnishing
2 consumer credit reports to third parties, but does not include any
3 governmental agency whose records are maintained primarily for
4 traffic safety, law enforcement, or licensing purposes.

5 (e) “Credit transaction that is not initiated by the consumer”
6 does not include the use of a consumer credit report by an
7 assignee for collection or by a person with which the consumer
8 has an account for purposes of (1) reviewing the account or (2)
9 collecting the account. For purposes of this subdivision,
10 “reviewing the account” includes activities related to account
11 maintenance and monitoring, credit line increases, and account
12 upgrades and enhancements.

13 (f) “Employment purposes,” when used in connection with a
14 consumer credit report, means a report used for the purpose of
15 evaluating a consumer for employment, promotion,
16 reassignment, or retention as an employee, *and the information in*
17 *the report is directly related to the skills necessary to perform the*
18 *job.*

19 (g) “File,” when used in connection with information on any
20 consumer, means all of the information on that consumer
21 recorded and retained by a consumer credit reporting agency,
22 regardless of how the information is stored.

23 (h) “Firm offer of credit” means any offer of credit to a
24 consumer that will be honored if, based on information in a
25 consumer credit report on the consumer and other information
26 bearing on the creditworthiness of the consumer, the consumer is
27 determined to meet the criteria used to select the consumer for
28 the offer and the consumer is able to provide any real property
29 collateral specified in the offer. For purposes of this subdivision,
30 the phrase “other information bearing on the creditworthiness of
31 the consumer” means information that the person making the
32 offer is permitted to consider pursuant to any rule, regulation, or
33 formal written policy statement relating to the federal Fair Credit
34 Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.),
35 promulgated by the Federal Trade Commission or any federal
36 bank regulatory agency.

37 (i) “Item of information” means any of one or more
38 informative entries in a credit report which causes a creditor to
39 deny credit to an applicant or increase the cost of credit to an

1 applicant or deny an applicant a checking account with a bank or
2 other financial institution.

3 (j) “Person” means any individual, partnership, corporation,
4 trust, estate, cooperative, association, government or
5 governmental subdivision or agency, or other entity.

6 (k) “Prequalifying report” means a report containing the
7 limited information permitted under paragraph (2) of subdivision
8 (b) of Section 1785.11.

9 (l) “State or local child support enforcement agency” means
10 the Department of Child Support Services or local child support
11 agency acting pursuant to Division 17 (commencing with Section
12 17000) of the Family Code to establish, enforce or modify child
13 support obligations, and any state or local agency or official that
14 succeeds to these responsibilities under a successor statute.

15 SEC. 2. Section 1786.2 of the Civil Code is amended to read:

16 1786.2. The following terms as used in this title have the
17 meaning expressed in this section:

18 (a) The term “person” means any individual, partnership,
19 corporation, limited liability company, trust, estate, cooperative,
20 association, government or governmental subdivision or agency,
21 or other entity. The term “person” as used in this title shall not be
22 construed to require duplicative reporting by any individual,
23 corporation, trust, estate, cooperative, association, government,
24 or governmental subdivision or agency, or other entity involved
25 in the same transaction.

26 (b) The term “consumer” means a natural individual who has
27 made application to a person for employment purposes, for
28 insurance for personal, family, or household purposes, or the
29 hiring of a dwelling unit, as defined in subdivision (c) of Section
30 1940.

31 (c) The term “investigative consumer report” means a
32 consumer report in which information on a consumer’s character,
33 general reputation, personal characteristics, or mode of living is
34 obtained through any means. The term does not include a
35 consumer report or other compilation of information that is
36 limited to specific factual information relating to a consumer’s
37 credit record or manner of obtaining credit obtained directly from
38 a creditor of the consumer or from a consumer reporting agency
39 when that information was obtained directly from a potential or
40 existing creditor of the consumer or from the consumer.

1 Notwithstanding the foregoing, for transactions between
2 investigative consumer reporting agencies and insurance
3 institutions, agents, or insurance-support organizations subject to
4 Article 6.6 (commencing with Section 791) of Chapter 1 of Part
5 2 of Division 1 of the Insurance Code, the term “investigative
6 consumer report” shall have the meaning set forth in subdivision
7 (n) of Section 791.02 of the Insurance Code.

8 (d) The term “investigative consumer reporting agency”
9 means any person who, for monetary fees or dues, engages in
10 whole or in part in the practice of collecting, assembling,
11 evaluating, compiling, reporting, transmitting, transferring, or
12 communicating information concerning consumers for the
13 purposes of furnishing investigative consumer reports to third
14 parties, but does not include any governmental agency whose
15 records are maintained primarily for traffic safety, law
16 enforcement, or licensing purposes, or any licensed insurance
17 agent, insurance broker, or solicitor, insurer, or life insurance
18 agent.

19 (e) The term “file,” when used in connection with information
20 on any consumer, means all of the information on that consumer
21 recorded and retained by an investigative consumer reporting
22 agency regardless of how the information is stored.

23 (f) The term “employment purposes,” when used in
24 connection with an investigative consumer report, means a report
25 used for the purpose of evaluating a consumer for employment,
26 promotion, reassignment, or retention as an employee, *and the*
27 *information in the report is directly related to the skills necessary*
28 *to perform the job.*

29 (g) The term “medical information” means information on a
30 person’s medical history or condition obtained directly or
31 indirectly from a licensed physician, medical practitioner,
32 hospital, clinic, or other medical or medically related facility.